

**DISCOUNT HEALTH CARE PROGRAMS**  
**Health and Safety Code, Chapter 76**  
**Title 2, Subtitle C, Programs Providing Health Care Benefits and Services**  
*(Effective September 1, 2007)*

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## **SUBCHAPTER A. GENERAL PROVISIONS**

### **Sec. 76.001. General Definitions**

In this chapter:

- (1) “Commission” means the Texas Commission of Licensing and Regulation.
- (2) “Department” means the Texas Department of Licensing and Regulation.
- (3) “Discount health care program” means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product regulated by the Texas Department of Insurance or a self-funded or self-insured employee benefit plan.
- (4) “Discount health care program operator” means a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charge to members.
- (5) “Marketer” means a person that sells or distributes a discount health care program, including a private label entity that places its name on and markets or distributes a discount health care program, but does not operate a discount health care program.
- (6) “Member” means a person who pays fees, dues, charges, or other consideration for the right to participate in a discount health care program.
- (7) “Program operator” means a discount health plan program operator.
- (8) “Provider” means a person who is licensed or otherwise authorized to provide health care services in this state.

### **Sec. 76.002. Applicability of Other Law.**

In addition to the requirements of this chapter, a program operator or marketer is subject to the applicable consumer protection laws under Chapter 17, Business & Commerce Code.

### **Sec. 76.003. Rules.**

The commission shall adopt the rules necessary to implement this chapter.

## **SUBCHAPTER B. PROGRAM REQUIREMENTS**

### **Sec. 76.051. Program Operator.**

Except as otherwise provided by this chapter, a program operator, including the operator of a freestanding discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, shall comply with this chapter.

### **Sec. 76.052. Prohibited Advertisement, Solicitation, and Marketing.**

- (a) Any advertisement, solicitation, or marketing material of a discount health care program may not contain false, misleading, or deceptive statement, including statements that:
  - (1) misrepresent the price range of discounts offered by the discount health care program;
  - (2) misrepresent the size or location of the program's network of providers;
  - (3) knowingly misrepresent the participation of a provider in the program's network; or
  - (4) suggest that a discount card offered through the program is a federally approved Medicare prescription discount card.
- (b) Any advertisement, solicitation, and marketing material of a discount health care program shall clearly and conspicuously state that the discount health care program is not insurance.
- (c) Any advertisement, solicitation, or marketing material of a discount health care program may not use the term "insurance," except as a disclaimer of any relationship between the discount health care program and insurance, or as a description of an insurance product connected with a discount health care program.
- (d) Any advertisement, solicitation, or marketing material of a discount health care program may not use the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides similar coverage.
- (e) Any advertisement, solicitation, or marketing material of a discount health care program may not use the term "free," "no obligation," "discounted," or "reduced," or another similar term, without disclosing clearly and conspicuously, and in close proximity to the use of the term, any and all conditions, limitations, and restrictions on the ability of the member or prospective member to obtain or use the good or service to which the term applies.
- (f) A program operator may not offer a "free" trial membership in a discount health care program without disclosing clearly and conspicuously, and in close proximity to the offer:
  - (1) any obligation of the member or prospective member associated with accepting the offered trial membership, including:
    - (A) an obligation to purchase other goods and services;
    - (B) an obligation to cancel membership or take other affirmative action to avoid incurring payment obligations; and
    - (C) the manner in which a cancellation request may be submitted
  - (2) the number of payments and amount of each payment that are or may be required and the circumstances under which additional payments may be required; and
  - (3) the conditions, limitations, and restrictions on the ability of the member or prospective member to use or cancel the offered trial membership.

**Sec. 76.053. Disclosure Materials Required.**

- (a) A program operator shall, before enrollment or with the written materials describing the terms and conditions of the program that are provided after enrollment, provide each prospective or new member disclosure materials containing the following information:

- (1) a general description of the services and products offered through the discount health care program and the types of providers available;
  - (2) a toll-free telephone number and an Internet website address through which a person may:
    - (A) obtain information about the discount health care program; and
    - (B) confirm or find a provider currently participating in that program;
  - (3) a clear and conspicuous statement that:
    - (A) the discount health care program is not insurance, with the word “not” capitalized; and
    - (B) the member is required to pay the entire amount of the discounted rate;
  - (4) a statement that a member who cancels the membership not later than the 30th day after the date the member joins the discount health care program is entitled to a refund of all membership fees paid to the discount health care program other than money paid as a nominal one-time enrollment fee or money paid by the member to a provider for health care services or products received;
  - (5) a statement that the discount health care program does not guarantee the quality of the services or products offered by individual providers;
  - (6) a statement that a member may file a complaint under the discount health care program’s complaint resolution procedure regarding the availability of contracted discounts or services or other matters relating to the contractual obligations of the program to its members; and
  - (7) a toll-free telephone number for filing complaints with the department.
- (b) A marketer shall use disclosure materials that comply with Subsection (a).

**Sec. 76.054. Program Operator Duties.**

A program operator shall:

- (1) provide a toll-free telephone number and Internet website for members to obtain information about the discount health care program and confirm or find providers currently participating in the program;
- (2) remove a provider from the discount health care program not later than the 30th day after the date the operator learns that the provider has lost the authority to provide services or products, including the suspension or revocation of the provider’s license;
- (3) issue at least one membership card to serve as proof of membership in the discount health care program that must:
  - (A) contain a clear and conspicuous statement that the discount health care program is not insurance; and
  - (B) if the discount health care program includes discount prescription drug benefits, include:
    - (i) the name or logo of the entity administering the prescription drug benefits;
    - (ii) the international identification number assigned by the American National Standards Institute for the entity administering the prescription drug benefits;

- (iii) the group number applicable to the member; and
  - (iv) a telephone number to be used to contact an appropriate person to obtain information relating to the prescription drug benefits provided under the program;
- (4) issue at least one set of disclosure materials to each household in which a person is a member;
- (5) ensure that an application form or other membership agreement:
  - (A) clearly and conspicuously discloses the duration of membership and the amount of payments the member is obligated to make for the membership; and
  - (B) contains a clear and conspicuous statement that the discount health care program is not insurance;
- (6) allow any member who cancels a membership in the discount health care program not later than the 30th day after the date the person becomes a member to receive a refund, not later than the 30th day after the date the operator receives a valid cancellation notice and returned membership card, of all membership fees paid by that member to the program operator other than an amount paid as a one-time enrollment fee or amount paid by the member to a provider for health care services or products received;
- (7) maintain a surety bond, for the payment of consumer claims in a manner prescribed by the department, in the principal amount of at least \$50,000, except that an insurer licensed under Title 6, Insurance Code, is not required to maintain a surety bond;
- (8) maintain an agent for service of process in this state; and
- (9) establish and operate a fair and efficient procedure for resolution of complaints regarding the availability of contracted discounts or services or other matters relating to the contractual obligations of the discount health care program to its members.

**Sec. 76.055. Marketing of Program.**

- (a) A program operator may market directly or contract with marketers for the distribution of the operator's discount health care program.
- (b) A program operator shall enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. The contract must prohibit the marketer from using advertising, solicitations, or other marketing materials, or discount cards that have not been approved in advance and in writing by the program operator.
- (c) A program operator must approve in writing all advertisements, solicitations, or other marketing materials, and discount cards used by marketers to market, promote, sell, or distribute the discount health care program before their use.

**Sec. 76.056. Contract Requirements.**

- (a) A program operator shall contract, directly or indirectly, with a provider offering discounted health care services or products under the discount health care program. The written contract must contain all of the following provisions:
  - (1) a description of the discounts to be provided to a member;

- (2) a provision prohibiting the provider from charging a member more than the discounted rate agreed to in the written agreement with the provider; and
  - (3) a provision requiring the provider to promptly notify the program operator if the provider loses the authority to provide services or products, including by suspension or revocation of the provider's license.
- (b) The program operator may not charge or receive from a provider any fee or other compensation for entering into the agreement.
  - (c) If the program operator contracts with a network of providers, the program operator shall obtain written assurance from the network that:
    - (1) the network has a written agreement with each network provider that includes a discounted rate that is applicable to a program operator's discount health care program and contains all of the terms described in Subsection (a); and
    - (2) the network is authorized to obligate the network providers to provide services to members of the discount health care program.
  - (d) The program operator shall require the network to:
    - (1) maintain and provide the program operator on a monthly basis an up-to-date list of providers in the network; and
    - (2) promptly remove a provider from its network if the provider loses the authority to provide services or products.
  - (e) The program operator shall maintain a copy of each written agreement the program operator has with a provider or a network.

### **SUBCHAPTER C. REGISTRATION**

#### **Sec. 76.101. Registration Required; Fees.**

- (a) A program operator may not offer a discount health care program in this state unless the operator is registered with the department.
- (b) An applicant for registration under this chapter or an applicant for renewal of registration under this chapter whose information has changed must submit:
  - (1) a registration form indicating the program operator's name and address and its agent for service of process;
  - (2) a list of names, addresses, official positions, and biographical information of:
    - (A) the individuals responsible for conducting the program operator's affairs, including:
      - (i) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;
      - (ii) the officers of the program operator; and
      - (iii) any contracted management company personnel; and

- (B) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator;
  - (3) a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under the discount health care program;
  - (4) a list of the marketers authorized to sell or distribute the program operator's program under the program operator's name and a list of the marketing entities authorized to private label the program operator's program; and
  - (5) a copy of the form of all contracts made or to be made between the program operator and any providers or provider networks regarding the provision of health care services or products to members.
- (c) After the initial registration, if the form of a contract described by Subsection (b)(5) changes, the program operator must file the modified contract form with the department before it may be used.
  - (d) As part of the registration required under Subsection (b), and annually thereafter, the program operator shall certify to the department that its programs comply with the requirements of this chapter.
  - (e) A discount health care program shall pay the department an initial registration fee of \$1,000 and an annual renewal fee not to exceed \$500.
  - (f) The department may conduct a criminal background check on the individuals responsible for conducting the program operator's affairs, each member of the board of directors, board of trustees, executive committee, or other governing board of committee, the officers of the program operator, any contracted management company personnel, and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator.
  - (g) This section does not apply to a program operator licensed under Title 6, Insurance Code.

#### **SUBCHAPTER D. DISCIPLINARY ACTION; PENALTIES**

##### **Sec. 76.151. Disciplinary Action.**

On a finding that a ground for disciplinary action exists under this chapter, the executive director of the department may impose an administrative sanction, including any administrative penalty, as provided by Chapter 51, Occupations Code.

##### **Sec. 76.152. Injunctive Relief; Civil Penalty, Damages.**

- (a) The executive director of the department may institute an action against a program operator or marketer for injunctive relief under Section 51.352, Occupations Code, to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.
- (b) In addition to the injunctive relief provided by Subsection (a), the executive director of the department may institute an action for a civil penalty as provided by Section 51.352, Occupations Code.
- (c) The amount of any civil penalty assessed under this section may not exceed \$2,500 for each violation.
- (d) Advertising, selling, or distributing a discount health care program that violates this chapter is a false, misleading, or deceptive act or practice for purposes of Section 17.46, Business & Commerce Code. The exclusive remedy for the violation of Section 17.46, Business & Commerce Code, is an action by the office of the attorney general as provided by Section 17.46(a), Business & Commerce Code.

- (e) The office of the attorney general may not bring an action under Section 17.46, Business & Commerce Code, for a violation arising out of the same act or failure to act for which an administrative or civil penalty has been assessed in accordance with Section 76.151 of this section.

**Sec. 76.153. Administrative Procedure.**

Sections 51.310, 51.353, and 51.354, Occupations Code, apply to a disciplinary action taken under this chapter.

**Sec. 76.154. Appeal.**

A person affected by a ruling, order, decision, or other action of the executive director of the department or the department may appeal by filing a petition in a district court in Travis County.

**Sec. 76.155. Subpoenas.**

- (a) The department may issue a subpoena as provided by this section.
- (b) The department may request and, if necessary, compel by subpoena:
  - (1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or a rule adopted or order issued by the commission or executive director; and
  - (2) the attendance of a witness for examination under oath.
- (c) A subpoena under this section may be issued throughout this state and may be served by any person designated by the commission or the executive director.
- (d) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.
- (e) Venue for an action brought under this section is in a district court in:
  - (1) Travis County; or
  - (2) any county in which the department may hold a hearing.
- (f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

**Sec. 76.156. Cease and Desist Orders.**

The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

- (1) this chapter; or
- (2) a rule adopted or order issued by the commission or the executive director.

**Sec. 76.157. Emergency Orders.**



- (a) If the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, the executive director may issue an emergency order to suspend or revoke a registration or to halt operation of a person subject to regulation by the department under this chapter.
- (b) The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.
- (c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.